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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/703,459	10/31/2000	Marc P. Schuyler	10005868-1	1881
22879 7590 01/31/2007 HEWLETT PACKARD COMPANY P O BOX 272400, 3404 E. HARMONY ROAD INTELLECTUAL PROPERTY ADMINISTRATION FORT COLLINS, CO 80527-2400			EXAMINER JANVIER, JEAN D	
			ART UNIT	PAPER NUMBER
			3622	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
2 MONTHS	01/31/2007	PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/703,459
Filing Date: October 31, 2000
Appellant(s): SCHUYLER, MARC P.

MAILED

JAN 31 2007

GROUP 3600

Ketan S. Vakil,
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on June 22, 2005 appealing from the Office action mailed on September 28, 2004.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,781,871	Mezger et al.	7-1998
WO 97/23838	Scroggie	7-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mezger et al. (hereinafter Mezger), US Patent 5,781, 871 in view of Scroggie, WO 97/23838.

As per claims 1, 2, 6, 8, 10 and 11, Mezger discloses a system wherein an onboard controller 20 of fig. 2 installed in a vehicle 11 can detect the presence of a vehicle maintenance event or malfunction or faulty operation based on data collected from the vehicle operations meeting or reaching or exceeding a vehicle maintenance criteria or pre-established diagnostic or maintenance threshold values stored in the programmable memory 22 of the vehicle controller 20 and wherein the controller wirelessly transmits diagnostic data DD or the occurrence of the maintenance event or faulty operations including the vehicle ID or identifier to a remote central computer 10. It is further understood that the owner of the vehicle 11, upon acquiring or buying the vehicle at a dealer's, provides upon filling an application personal information, such as home and work addresses, home and work phone numbers, social security number, annual income, e-mail address, etc., wherein the social security number is used to conduct a credit report or credit check on behalf of the individual or customer and wherein the home address is used to contact the customer in the event of a recall or to send promotional materials including coupons on service maintenance to the customer, as practiced in the art. In other words, by extracting the vehicle 11 ID or identifier from the transmitted DD report (diagnostic data report), the customer associated with the vehicle 11 is being identified, wherein a notification can be sent to the customer to bring the vehicle to a local repair shop or workshop for inspection, maintenance

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service or repair. Furthermore, the central computer 10 can contact the vehicle 11 and call up the DD concerning the vehicle 11 at any point in time and if a faulty operation has been detected in the vehicle operation, then the vehicle 11 can be called into a workshop or service facility for service maintenance or repair or inspection (Col. 1: 57 to col. 2: 50; col. 3: 40-52; col. 3: 58 to col. 5: 65; figs. 1-3; claims 4, 6-8 and 10 of the present reference).

As per claims 1, 3-6, 8 and 9, Megzer does not expressly disclose generating a promotion related to the maintenance event or the detection of a faulty operation in vehicle 11, wherein the promotion represents at least one discount coupon, redeemable on the maintenance event or faulty operation, from a local service provider or workshop operator, capable of fixing the faulty operation or defect, servicing a geographic location proximate to the vehicle 11 owner residence, wherein another discount coupon, corresponding to the promotion, applicable on a product complimentary to the vehicle maintenance event or vehicle 11 faulty operation is being generated and wherein the promotion or the discount coupon on the maintenance event from the local service provider or the other discount coupon on the complimentary product is transmitted or e-mailed to the vehicle 11 owner.

However, Scroggie discloses an incentive distribution network or system for providing from a plurality of providers purchase incentive offers, such as electronic coupons, recipes, rebates, shopping aids, product samples, supermarket specials, etc. to qualified customers over the Internet or communications network. First of all, the customer logs into the system and fills out a registration form where he provides his demographic information including geographical location having a specific zip code and other postal code since the features of the present system are location-dependent. If it is determined by the system that the submitted zip code is a valid zip code, that is a

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zip associated with a retail store where an electronic coupon can be redeemed, then the system allows the customer to proceed to the main menu and browse among available purchase incentive offers. The system merges customer supplied-information 270 with other purchase incentive data 272 of fig. 12 and creates or customizes a printable graphical image of the purchase incentive 282 for transmission or delivery to the identified customer. In one alternate embodiment of the invention, the purchase incentive or electronic coupon is not directly transmitted to the customer, instead the terms of the purchase incentive or coupon, for example, are transmitted electronically to a retail store 310 of fig. 13, located in the customer's geographical location or zip code, pre-selected by the said customer, who receives either a token 316 or an advisory message to present at the retail store 310 during a redemption process.

(Receiving by the incentive distribution network coupon image or coupon data and target market characteristics or parameters from a manufacturer or product distributor interested in having their product promotions displayed or distributed on the incentive network, wherein the incentive distribution network stores the coupon image or coupon data and target market parameters as data in a database and wherein the coupon data are later retrieved and used to prepare a customized coupon image to be displayed to a qualified customer having specific characteristics, as specified by the manufacturer or product distributor, over a communications network).

(See abstract; page 10: 4 to page 11: 14; page 1: to page: 7: 6; page 16: 5 to page: 18: 18; figs. 1-5, 11-18).

In a further embodiment of the invention, incentives may be customized or targeted to a specific customer based on the customer's purchase history (previous purchase) 502 collected at

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a retailer's store after the sale of one or more products and provided to a product manufacturer or distributor or System Administrator system, and wherein the purchase history data comprising at least one product sold at the retailer's and wherein after this customization, by the manufacturer or provider or distributor of the product in conjunction with the retailer, the incentives are transmitted to consumer's computer 510 via electronic mail or e-mail address stored in a consumer database 506 storing customer's registration information or via a personal web page (electronic device) in the computer network established for each consenting consumer wherein the personal web page or electronic device is used to display the customized incentives to the user or customer whenever he/she logs into the network and wherein the web page is also customized, by the manufacturer in association with the retailer, using among other things the purchase history 502 collected at the retailer's store. Here, it is to be understood that the customized web page or electronic device will display on the user computer targeted incentives created specifically for the user based on the user demographic data, purchase history data and most of all based on information specific to the retailer, such as the location of one of his stores in the user's geographical area (See abstract; page 10: 4 to page 11: 14; figs. 1-5, 11-18; page 22: 2 to page 23: 2).

Moreover, the incentives, such as shopping aids, supermarket specials, retailer's offers, manufacturer's samples, sweepstakes, rebates, coupons, etc., are considered to be a form of advertisements for manufacturer's and retailer's products and wherein these incentives or product promotions or advertisements are downloaded by the user or customer in an interactive manner (page 6: 3-12; page 24: 3-6). Further, in yet another embodiment, incentives may be targeted to specific customers based on a customer's purchase history (502) and transmitted to the

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consumers by e-mail using the customers' e-mail addresses stored in a consumer database (506). In other words, notification or indication of the availability of these incentives is transmitted to the customers in the form of Internet messages, for retrieval when the customers or consumers next access a web site associated with the system or check their e-mails. Finally, the incentive message informs a customer that one or more specific offers are available and can be received at a participating POS when the prerequisite products are purchased. Alternatively, subsequent to receiving an e-mail notification or an indication of an incentive offer, an image of a paper coupon may be transmitted to the customer's computer site and printed for later presentation at pre-selected POS (See abstract; page 9: 22-30; page 12: 23-25; page 13: 2-3; page 15: line 3-10; page 20: 2-8; page 20:16 to page 21: 30; figs 9 and 11-15).

Additionally, it is common practice for a car dealer, upon selling a car to a customer or servicing a customer's car, to collect customer's personal data, such home and work addresses, home and work phone numbers, social security number, annual income, e-mail address, etc., wherein in the case of a car purchase the social security number is used to conduct a credit report or credit check on behalf of the individual or customer for a loan approval or otherwise and wherein the home address is used to contact the customer in the event of a recall or to send promotional materials including coupons on service maintenance to the customer. In short, the dealer keeps record of the last odometer reader of the customer's car during the car purchase or service and estimates after a certain period of time when the car is due, for instance, for a motor oil change, transmission oil change, tune-up, timing belt change, etc., in accordance with the car manufacturer's recommendations requiring that the car receive a service maintenance based on the number of miles thus far recorded in order to keep the car in good operating condition. The

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dealer may also send discount coupons to the customer for services in accordance with the time of year. The dealer may also provide a discount coupon to a customer in an effort to encourage the identified customer to return to the dealer's service location for scheduled service maintenance and wherein the discount coupon is applicable on a product or service different from the scheduled maintenance service (complimentary product or service).

Finally, providing a discount coupon to a customer redeemable on a complimentary product is old and well established in the industry for many years (no further disclosure is necessary here).

Therefore, an ordinary skilled artisan, implementing the Mezger's system, would have been motivated at the time of the invention without reading the Instant Application to incorporate the above disclosures (Scroggie and the publicly disclosed and well known material) into the vehicle diagnostic system of Mezger so as to provide to a customer or vehicle 11 owner a promotion or a discount coupon, from a local service provider or car dealer servicing an area proximate to the vehicle 11 owner's residence, redeemable on a service maintenance or repair at the local service provider's or car dealer's location subsequent to detecting a maintenance event or a faulty operation in vehicle 11 or to issue another discount coupon, applicable to a complimentary product or service unrelated to the current maintenance event, to the customer or owner of vehicle 11, wherein the promotion or discount coupon or the other discount coupon is mailed or e-mailed to the customer or owner of the identified vehicle 11 or an advisory note or token is transmitted to the customer to enable him to receive the associated benefit upon

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presenting the advisory note or token at the local service provider's or car dealer's repair location, thereby encouraging the customer or vehicle 11 owner to return to the dealer's shop or local service provider location to have vehicle 11 serviced or repaired for the current problem associated with the triggering maintenance event, or for other regular service maintenance, such as motor or transmission oil change, timing belt replacement or tune-up, etc., that is due or past due based upon the vehicle 11 odometer current reading and the manufacturer's criteria or recommendations and for other potential faulty operations or defects revealed as a result of a meticulous testing or inspection conducted at the workshop or dealer's shop or service provider's location or to acquire at least one related or complimentary item upon redeeming the other discount coupon at the workshop, while recording at the end of the service repair the current odometer reading, which is used not only to estimate or schedule the next routine service maintenance related to the vehicle 11, but also to further target the customer or the owner of the identified vehicle 11 by issuing at least one discount coupon to the customer, wherein the discount coupon is associated with the next scheduled routine service maintenance and wherein records stored in the programmable memory 22 coupled to the vehicle 11 onboard system and corresponding to the monitoring of the vehicle 11 operations can be utilized by the vehicle 11 manufacturer to study the vehicle 11 (being of a specific type and model) performance and to make recommendations for future models and to even recall if need be all vehicles 11 that may exhibit a common malfunction or defect in order to protect the public at large, as commonly practiced in the industry.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mezger and in view of Park, US Patent 5, 627, 549.

Although, as per claim 7, Mezger teaches a vehicle 11 having an onboard computer system having a traditional micro-processor, volatile memory or RAM and non-volatile memory or ROM or a hard disk drive to store records, however Mezger does not explicitly disclose the presence of a screen or display coupled to the vehicle 11 onboard computer system 20 for displaying a transmitted promotion or advertisement to the individual or the driver of vehicle 11.

However, Park discloses a system wherein a user or operator of mobile vehicle 10 can interact with an advertisement or promotional message (promotion) aired and transmitted (synchronized broadcast 22 and 26) by pressing the where **button** 102(f) in the front panel of information device 40 inside the mobile vehicle 10, which indicates to the microprocessor 60 of device 40 that the driver or operator desires to collect or to receive further information, such as the advertiser's name, address or location and so forth, from the broadcast 22 or transmitted or aired or played advertisement and wherein the requested information is displayed to the operator or driver of the vehicle on the device 40 screen 100a as shown in fig. 3. In other words, a broadcast or aired advertisement or promotion is being transmitted to the device 40 and displayed in the form of text on a display or screen 100a coupled to the device 40 installed inside the vehicle 10. Furthermore, by pressing stored information button 102g, the user can search a local database or customized local database of the device 40 storing data records for each geographic point of interest to the user including records associated with selective display of previously stored advertisements (activity log file), such as records related to the advertisement recently broadcast or just aired by broadcast system 20 and displayed on the vehicle information

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device 40 screen 100a following a request for more information by the user. In other words, the user constructs a personal reference tracking travel information comprising data records for particular geographic points of interest, data records selected, related to one or more displayed or aired advertisements, by the user and of interest to the user, thereby creating a user profile or user pattern based on the stored data records of geographic points of interest to the user and stored data records of previously selected or displayed advertisements and/or requests from the user for further information in response to currently played advertisements or broadcasts. Here, the user's request for more information in response to the playing of a synchronized broadcast, that is voice and text data, is similar to displaying text data related to the advertisement (see fig. 3). (Read on creating an activity log of displayed advertisements and creating a user's pattern or user's profile using the activity information and the user's request or simply creating a user data from the local customized database). (See Col. 6: 41-65; col. 6: 66 to col. 7: 11; col. 8: 34-51; figs. 3-6).

Therefore, an ordinary skilled artisan would have been motivated at the time of the invention without reading the Instant Application to incorporate Park's teachings into the vehicle diagnostic system of Mezger so as to connect a screen or display to the vehicle 11 onboard computer system 20 and to transmit a promotion or advertisement to be displayed on the screen or display, wherein the promotion or advertisement may contain, among other things, information on a discount coupon redeemable on a service maintenance related to a triggering maintenance event or detection of a faulty operation in vehicle 11, thereby providing real-time service repair

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information to the customer conducted in a wireless mode, while encouraging the customer or driver to visit a local service provider to have his vehicle 11 repaired upon redeeming the coupon associated with the current service repair.

(10) Response to Argument

In general, Appellant submits that the prior art combination does not yield to “generating a promotion associated with the vehicle maintenance event”, as recited in at least the independent claim (claim 1), and that Mezger (the primary reference) does not alone disclose the above limitation and that Scroggie, a secondary reference, used to address the deficiency in Mezger falls short and hence the combination of Mezger and Scroggie does not yield to the above claim limitation and that there is no motivation to combine the references (See page 8 and beginning of page 9 of the Brief). Furthermore, Appellant advances that there is no statement in either Mezger or Scroggie that would lead a person of ordinary skill in the art to make the combination as suggested in the Office Action since each reference seeks to solve a different problem (see the first two paragraphs of page 10 in the Brief). In response, the Examiner respectfully and completely disagrees with the Appellant's findings:

First, the Appellant's arguments are incomplete and inaccurate for failure to traverse or challenge the rejection as recorded in the Office Action. In fact, the Examiner uses the Scroggie's reference and publicly disclosed and well known materials to address the deficiency in Mezger and to show respectively that providing a discount coupon redeemable on a product or service at a local store is taught in the prior art and providing a

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discount coupon redeemable on a potential, probable and future service to a customer is old and well established in the industry. Indeed, the Appellant in his remarks has explicitly, deliberately or tacitly omitted the featured well known materials, which have not been officially challenged and have thus become admitted or de facto prior art. Broadly interpreted, the well-known materials, as seen below, have addressed the deficiency in Mezger.

“Additionally, it is common practice for a car dealer, upon selling a car to a customer or servicing a customer's car, to collect customer's personal data, such home and work addresses, home and work phone numbers, social security number, annual income, e-mail address, etc., wherein in the case of a car purchase the social security number is used to conduct a credit report or credit check on behalf of the individual or customer for a loan approval or otherwise and wherein the home address is used to contact the customer in the event of a recall or to send promotional materials including coupons on service maintenance to the customer. In short, the dealer keeps record of the last odometer reader of the customer's car during the car purchase or service and estimates after a certain period of time when the car is due, for instance, for a motor oil change, transmission oil change, tune-up, timing-belt change, etc., in accordance with the car manufacturer's recommendations requiring that the car receive a service maintenance based on the number of miles thus far recorded in order to keep the car in good operating condition. The dealer may also send discount coupons to the customer for services in accordance with the time of year. The dealer may also provide a discount coupon to a customer in an effort to encourage the identified customer to return to the dealer's service location for scheduled service maintenance and

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wherein the discount coupon is applicable on a product or service different from the scheduled maintenance service (complimentary product or service).

Finally, providing a discount coupon to a customer redeemable on a complimentary product is old and well established in the industry for many years (no further disclosure is necessary here)."

Hence, contrary to the Appellant's contention, an ordinary skilled artisan, implementing the Mezger's system and being aware of the well known materials as shown above, would have been motivated at the time of the invention without reading the Instant Application to incorporate at least the above disclosure into the vehicle diagnostic system of Mezger so as to provide to a customer or vehicle 11 owner a promotion or a discount coupon, from a local service provider or car dealer servicing an area proximate to the vehicle 11 owner's residence, redeemable on a service maintenance or repair at the local service provider's or car dealer's location subsequent to detecting a maintenance event or a faulty operation in vehicle 11 or to issue another discount coupon, applicable to a complimentary product or service unrelated to the current maintenance event, to the customer or owner of vehicle 11, wherein the promotion or discount coupon or the other discount coupon is mailed or e-mailed to the customer or owner of the identified vehicle 11 or an advisory note or token is transmitted to the customer to enable him to receive the associated benefit upon presenting the advisory note or token at the local service provider's or car dealer's repair location, thereby encouraging the customer or vehicle 11 owner to return to the dealer's shop or local service provider location to have vehicle 11 serviced or repaired for the current problem associated with the triggering maintenance event, or for other regular service maintenance, such as motor or transmission oil change, timing belt

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replacement or tune-up, etc., that is due or past due based upon the vehicle 11 odometer current reading and the manufacturer's criteria or recommendations and for other potential faulty operations or defects revealed as a result of a meticulous testing or inspection conducted at the workshop or dealer's shop or service provider's location or to acquire at least one related or complimentary item upon redeeming the other discount coupon at the workshop, while recording at the end of the service repair the current odometer reading, which is used not only to estimate or schedule the next routine service maintenance related to the vehicle 11, but also to further target the customer or the owner of the identified vehicle 11 by issuing at least one discount coupon to the customer, wherein the discount coupon is associated with the next scheduled routine service maintenance and wherein records stored in the programmable memory 22 coupled to the vehicle 11 onboard system and corresponding to the monitoring of the vehicle 11 operations can be utilized by the vehicle 11 manufacturer to study the vehicle 11 (being of a specific type and model) performance and to make recommendations for future models and to even recall if need be all vehicles 11 that may exhibit a common malfunction or defect in order to protect the public at large, as commonly practiced in the industry.

Moreover, regarding dependent claim 3, Scroggie discloses providing one or more incentives to a customer if the customer entered Zip Code matches the Zip Code of a retailer's geographic location where the incentives can be redeemed. It is also understood, and as featured in the well known materials, that when a car dealer or car service station owner provides a discount coupon to a driver of vehicle 11, that coupon is redeemable on a service/repair offered or available at the car dealership or car service station proximate to the user's or vehicle 11

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owner's location (which broadly interpreted reads on filtering retailers or providers or car service stations based on geographic location). Here, one of ordinary skilled in the art, exposed to the above disclosure, would have been motivated at the time of the invention to incorporate the above disclosure into the vehicle diagnostic of Mezger to arrive at the claim limitation for the reasons given above.

Furthermore, under a 103 rejection, the motivation to combine two or more references, to be proper, is either suggested by the references themselves or it is based on the general knowledge of an ordinary skilled artisan. Here, the motivation to incorporate at least the well known materials into the Mezger's system, for instance, is to encourage, among other things, the customer or vehicle 11 owner to return to the dealer's shop or local service provider location to have vehicle 11 serviced or repaired for the current problem associated with the triggering maintenance event or for other regular service maintenance, such as motor or transmission oil change, timing belt replacement or tune-up, etc., that is due or past due based upon the vehicle 11 odometer current reading and the manufacturer's criteria or recommendations and for other potential faulty operations or defects revealed as a result of a meticulous testing or inspection conducted at the workshop or dealer's shop or service provider's location. The above motivational statement is well within the level of skills of an ordinary artisan such as a car dealer and/or car

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service station owner. **In addition**, Mezger teaches a system that has the advantage of avoiding the erroneous establishment of diagnostic thresholds. Consequently, unnecessary time spent on repair and costs are avoided. Furthermore, the application work on the motor vehicles is also simplified. This makes more accurate monitoring of the vehicles possible. Environmentally harmful operating characteristics can be detected and prevented earlier. **The driver of a vehicle or vehicle 11 can be made aware of the aging characteristics of his vehicle, with the result that he can, if need be, adapt his own driving behavior to these characteristics** (col. 1: 57-67). As seen above, Mezger supports providing or sharing the vehicle maintenance event (diagnostic event) with the driver or vehicle owner. Thus, it is herein understood, as featured above, that a maintenance event notification can be sent or provided to the driver of the vehicle along with a coupon redeemable on the service related to the maintenance event, as an ordinary practitioner would have concluded at the time of the invention.

It is also improper for an Appellant to totally ignore a critical portion (the well known materials) of an Office Action (disclosure) that alone or in combination reads on a claimed invention or limitation. In this case, the Appellant's remarks, as herein submitted, are said to be incomplete. In other words, the Appellant has failed, as featured in the Brief, to properly traverse or challenge the rejection as presented therein. Having done that, the Appellant has implicitly admitted that the combination of Mezger and the well known

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materials (with or without Scroggie) reads on the argued claim limitation. Additionally, the Appellant's remarks are not persuasive for failure to properly respond to the Office Action on the merits.

Second, regarding dependent claim 7, Park supports, contrary to the Appellant's conclusion, visually displaying a message or a promotion or advertising related information to a user's screen coupled to the vehicle. For instance, Park shows in fig. 3 a screen 100a, coupled to the featured vehicle, that displays a promotion or an advertisement, such as "Mike's Bikes", "Special on Helmets, through June 25". That was clearly a promotion or an advertising message on behalf of an advertiser called "Mike's Bikes" having a special on helmets until June 25, as an ordinary skilled artisan would have concluded. Thus, contrary to the Appellant's contention, an ordinary skilled artisan, exposed to the above teaching or disclosure, would have been motivated at the time of the invention to incorporate Park's teaching of displaying a promotion or an advertising message into the vehicle diagnostics system of Mezger so as to connect a screen or display to the vehicle 11 onboard computer system 20 and to transmit a promotion or advertisement to be displayed on the screen or display, wherein the promotion or advertisement may contain, among other things, information on a discount coupon redeemable on a service maintenance related to a triggering maintenance event or detection of a faulty operation in vehicle 11, thereby providing real-time service repair information to the customer conducted in a wireless mode, while encouraging the customer or driver to visit a local service provider to have his vehicle 11 repaired upon redeeming the coupon associated with the current service repair.

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Finally, the Appellant's request for allowance or withdrawal of the last Office Action has been fully considered and respectfully denied in view of the foregoing response since the Appellant's arguments as herein presented are not plausible and thus, the rejections should be sustained or maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this Examiner's answer.


For the above reasons, the rejections should be sustained.


Respectfully submitted,

JDJ

01/20/07

Conferees:

Eric Stamber (3622 SPE) 

Jeff Carlson (3622 XP) 

LAN D. JANVIER
PRIMARY EXAMINER

